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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VISX, INC.,)	
)	No. C98-4842 CRB (BZ)
Plaintiff(s),)	No. C00-0870 CRB (BZ)
)	No. C00-0869 CRB (BZ)
v.)	No. C00-0871 CRB (BZ)
)	
NIDEK CO., et al.,)	MDL NO. 1319
)	
Defendant(s).)	ORDER DENYING MOTION TO
)	ENFORCE DOCUMENT SUBPOENAS
)	
_____)	
and CONSOLIDATED CASES)	
_____)	

Before the court is VISX’s motion to enforce document subpoenas issued to at least 16 third parties. Relying on Fed. R. Civ. P. 45, Nidek asserts that this court lacks jurisdiction to rule on the subpoenas, because they were issued by courts outside the Northern District of California.

Under Rule 45, the only procedure for enforcing a subpoena duces tecum is to institute contempt proceedings before the district court that issued the subpoena. See Fed. R. Civ. P. 45(e); Schwarzer, Tashima & Wagstaffe, Rutter Group Prac. Guide: Fed. Civ. Pro. Before Trial §§ 11:409, 11:949

1 (2001).¹

2 Despite the clear language of Rule 45, VISX argues that
3 this court has jurisdiction to enforce the document subpoenas
4 because it is the transferee court in multidistrict
5 litigation. VISX bases its argument on 28 U.S.C. § 1407(b),
6 which states:

7 [t]he judge or judges to whom such [multidistrict]
8 actions are assigned . . . may exercise the powers of a
9 district judge in any district for the purpose of
conducting **pretrial depositions** in such coordinated or
consolidated pretrial proceedings.

10 28 U.S.C. § 1407(b) (emphasis added).

11 The flaw in VISX's argument is that § 1407(b) expands a
12 transferee court's discovery powers only to pretrial
13 depositions.² Had Congress wanted to expand these powers to
14 document subpoenas, it would have said so. VISX has not
15 produced, and the court has not found, any legislative history
16 or commentary to suggest Congress meant something other than
17 what it said.

18 VISX relies on two cases construing § 1407(b) which hold
19 that a transferee court may enforce a subpoena for the
20 production of documents at a deposition, issued by the
21 district court in which the witness is located. See In re

23 ¹ Likewise, only "the court by which the subpoena was
24 issued shall quash or modify the subpoena" Fed. R.
25 Civ. P. 45(c)(3)(A). See also In re Armstrong v. Red River
26 Entertainment of Shreveport, 1997 WL 739616 at *1 (Bankr. E.D.
27 Ark. Nov. 12, 1997); Aquinaga v. United Food and Commercial
Workers Int'l Union, 1993 WL 405964 at *2 (D. Kan. Sept. 27,
1993); 9A Wright & Miller, Federal Practice & Procedure § 2459
(1995).

28 ² Under Fed. R. Civ. P. 30(d)(4), even in non-
multidistrict litigation, the court in which the action is
pending has jurisdiction to issue orders with respect to
depositions taken in other districts.

1 Factor VIII or IX Concentrate Blood Prods. Litig., 174 F.R.D.
2 412, 415 (N.D. Ill. 1997);³ In re Sunrise Sec. Litig., 130
3 F.R.D. 560, 585-86 (E.D. Penn. 1989). Neither of these cases
4 consider whether § 1407(b) extends a transferee court's
5 authority to enforce a documents only subpoena.

6 VISX further asserts that the interests of judicial
7 economy and of uniformity require this court as transferee
8 court to rule on all the subpoenas. However strong those
9 interests may be, they exist in any case in which subpoenas
10 duces tecum issue from courts other than the district in which
11 a case is pending. Yet Rule 45 is clear that such subpoenas
12 can only be enforced in the district in which they were
13 issued.

14 For the foregoing reasons, it is hereby **ORDERED** that
15 VISX's motion to enforce document subpoenas is **DENIED**.

16 Dated: June 27, 2002

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Bernard Zimmerman
20 United States Magistrate Judge

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27 ³ While it is not altogether clear whether the subpoena
28 in Factor VIII was for documents only or was for documents to
be produced at a deposition, compare 174 F.R.D. 415 with 413,
415-16, the court in its analysis treats the subpoena as if it
were connected to a deposition and offers no justification for
extending § 1407(b) to a subpoena requiring only document
production. See id. at 415-16.